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Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF MICHELLE
YANG IN SUPPORT OF PLAINTIFF'S
AND DEFENDANTS' RESPECTIVE
COMPREHENSIVE
ADMINISTRATIVE MOTIONS TO
FILE DOCUMENTS UNDER SEAL**

1 I, Michelle Yang, declare as follows:

2 1. I am an attorney at the law firm of Morrison & Foerster LLP. I make this
3 declaration based upon matters within my own personal knowledge and if called as a witness,
4 I could and would competently testify to the matters set forth herein. I make this declaration in
5 support of Plaintiff's and Defendants' respective Comprehensive Administrative Motion to File
6 Documents Under Seal.

7 2. In its February 9, 2018 Order, the Court denied two hundred and five
8 administrative motions to file documents under seal and ordered each side to submit a
9 comprehensive administrative motion to file documents under seal. (Dkt. 2653.) Many of the
10 motions at issue were filed in connection with dispositive motions and therefore must be
11 considered under the "compelling reasons" standard. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d
12 665, 678 (9th Cir. 2010). The remaining motions were connected with non-dispositive motions
13 and can thus be considered under the "good cause" standard. *Id.* Under either standard, the
14 narrowed documents or portions identified herein by Defendants merit sealing. I have confirmed
15 that all of these documents or portions thereof are "narrowly tailored to seek sealing of only
16 sealable material," in accordance with Civil Local Rule 79-5(b), and that these documents still
17 require sealing "in light of all the information that has already become public over the course of
18 this litigation via court filings, orders, public hearings, media publications, and at trial." (Dkt.
19 2653.) The comprehensive motions each contain a table with (1) a column identifying documents
20 or portions thereof that Defendants seek to seal, and (2) a column identifying documents or
21 portions thereof that plaintiff seeks to seal. For both comprehensive motions, the column with
22 Defendants' requests to seal includes citations to the below paragraphs of this Declaration.

23 Defendants' motion includes Waymo's designations of confidentiality, specifically to
24 technical information relating to Defendants' LiDAR design, without prejudice to any of their
25 rights, including Defendants' ability to argue that the technical information is not confidential
26 information reflecting any trade secrets of Waymo and that in any case the dismissal (Dkt. 2651)
27 moots such claims to confidentiality.
28

1 **I. CATEGORIES OF SEALABLE INFORMATION**

2 3. **CONTACT INFORMATION:** These documents or portions thereof include
3 personal contact information of Defendants' current and former employees, as well as other
4 individuals either involved in this litigation or completely unrelated to it. This personal contact
5 information includes personal email addresses, telephone numbers, and mailing addresses. The
6 Court has regularly granted sealing of this type of information. (*See, e.g.* Dkt. 2393 at 9; Dkt.
7 2387 at 2:18 and 2:22-24.) There is no public interest in the disclosure of personal contact
8 information, which threatens the privacy interests of these individuals and could lead to
9 harassment or other harm. In light of the widespread media interest in this litigation, publication
10 of these individuals' contact information would harm their privacy and safety with no
11 corresponding public benefit.

12 4. **TECHNICAL INFORMATION:** These documents or portions thereof include
13 technical information regarding Uber's LiDAR development and/or self-driving software
14 development. In light of information that has already become public, Defendants' requests have
15 been narrowly tailored to detailed schematics, internal analyses of technical design options
16 considered by Uber engineers, technical specifications, excerpts of source code, and descriptions
17 of specific challenges in source code design. This information has been maintained as highly
18 confidential. Disclosure of this highly confidential information would allow Uber's competitors
19 in LiDAR or self-driving to acquire insight to Uber's LiDAR and/or software design choices,
20 parameters, and solutions. This insight would allow competitors to tailor their own technical
21 development and advance their own self-driving car programs, and harm Defendants' competitive
22 standing in the self-driving industry.

23 5. **BUSINESS INFORMATION:** These documents or portions thereof include
24 highly confidential business information, including internal company notes and communications
25 regarding market strategy, organizational logistics, detailed financial reports, business
26 evaluations, research objectives, research results, financial numbers regarding research budgets,
27 and confidential business negotiations. Defendants' request is narrowly tailored to avoid any
28 business information or communications at the level of specificity that has already been made

1 public through filings, hearings, and trial. Defendants' requests are focused on detailed
2 information relating to past performance, budgets, or future projections, or granular analysis that
3 has not become public. The Court has granted sealing of confidential business information of this
4 kind that could benefit the parties' competition. (Dkt. 2237 at 2:21-24 (granting motion to seal
5 because the exhibits discussed or referred to "Waymo's confidential business information,
6 including internal Waymo documents describing its market analyses, plans, forecasts, and
7 financial information..., disclosure of which could harm Waymo's competitive standing").) In
8 another matter, this Court granted sealing of "detailed business information,
9 including...proprietary analysis of potential competition." *Maquet Cardiovascular LLC v.*
10 *Saphena Med., Inc.*, No. C 16-07213 WHA, 2017 U.S. Dist. LEXIS 211613, at *3 (N.D. Cal.
11 Dec. 26, 2017). Here, this information has been maintained as confidential, and disclosure of this
12 information would allow competitors to analyze, imitate, or obstruct Defendants' business
13 strategy, thus harming Uber's competitive standing in the self-driving car industry.

14 **6. VENDOR INFORMATION:** These documents or portions thereof include names
15 of or references to confidential third party vendors of Uber, which reveal Uber's internal strategy
16 and efforts for LiDAR development or for research relating to competitive intelligence. The
17 Court has already granted sealing of information regarding certain of Uber's third party vendors
18 (Dkt. 1075 at 2:12-14 and 2:27), as well as the identity of Waymo's vendors (Dkt. 1076 at 1.)
19 This information has been maintained as confidential and has not become public in this litigation.
20 Defendants request this information be kept sealed in order to protect the confidentiality of these
21 business relationships and to protect these business partnerships from interference from third
22 parties. Disclosure of this information could allow Uber's competitors to gain a competitive
23 advantage by understanding vendors that Uber uses for LiDAR development or competitive
24 intelligence research and tailoring their own efforts to imitate or bottleneck Uber's efforts, thus
25 harming Uber's competitive standing.

26 **7. VELODYNE TECHNICAL INFORMATION:** These documents or portions
27 thereof include technical information contained in documents produced by third party Velodyne
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1 or in deposition testimony from Velodyne's corporate representative that Velodyne designated as
2 confidential or highly confidential under the Protective Order.

3 8. **BUSINESS AGREEMENTS:** These documents or portions thereof include
4 highly confidential information regarding current or potential agreements relating to Defendants,
5 including specific financial details or specific obligations that are subject to ongoing negotiations.
6 This information has been maintained as confidential and has not become in this litigation. The
7 Court previously granted sealing of information of this kind at Dkt. 1075 at 2:1-3. (Dkt. 2393,
8 Order at 3:1-3.). Public disclosure of this information could allow Uber's competitors to obtain
9 an advantage by gaining insight to how Uber made specific or potential business arrangements to
10 address a segment of the self-driving market, such that these competitors could imitate Uber or
11 seek to disrupt Uber's efforts, thus harming Uber's competitive standing.

12 9. **OTHER PERSONAL OR BUSINESS INFORMATION:** These documents or
13 portions thereof include specific personal or business information unrelated to the claims in this
14 litigation: (1) personal compensation information that has not become public in this litigation , of
15 which public disclosure would harm privacy interests and/or impede those persons' ability to
16 negotiate future salaries in the employment market; (2) aggregated and granular salary
17 information of various Uber departments that has not formed the basis of either sides' damages
18 theories that were made public in this litigation; (3) details of a business deal unrelated to this
19 litigation; and (4) the name of a former Uber employee, whose practices relating to instructions to
20 employees are unrelated to the claims of this litigation.

21 10. **SYSTEM SECURITY:** These documents or portions thereof contain details
22 regarding Uber's internal server names and technical system processes, Uber employees' user
23 IDs, user names, and/or computer or phone serial numbers, and the detailed cell phone
24 configuration information of a former Uber executive. This information has been maintained as
25 confidential and has not become public in this litigation. The Court has already granted sealing of
26 certain server names and other systems information. (Dkt. 994 at 2:16-19 and 3:17-18; Dkt. 2387
27 at 3:1-3.) Disclosure of this information could allow others to compromise the security of Uber's
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1 servers or current or former Uber employees' devices, such as by spoofing Uber employee
2 identities or attempting to access Uber internal systems or electronic communications.

3 11. **ISSUES RELATING TO JACOBS' ALLEGATIONS:** These documents or
4 portions thereof contain references to the same type of confidential material for which the Court
5 granted sealing in its November 29, 2017 Order and December 13, 2017 Order, which are
6 reflected in the public refiling of the "Jacobs letter" at Dkt. 2401-2. (Dkt. 2307-2; Dkt. 2382;
7 Dkt. 2401-2.) These documents or portions thereof contain information that implicates the safety,
8 privacy, and reputational interests of former and current Uber employees and vendors, as well as
9 various third-party individuals and entities. These issues ultimately played no part in trial and
10 were unrelated to the merits of this case, such that the public's interest in disclosure of this
11 information is low. The Court previously sealed this type of information, and Defendants request
12 that it do so again.

13 12. **DATA GOVERNANCE INITIATIVE:** These documents or portions thereof
14 contain highly confidential information relating to a data governance program that was never
15 implemented at Uber but which was intended to effectively manage the data, documents, and
16 email generated by the company and to identify what information needed to be retained. This
17 information has been maintained as confidential, and has not become public in this litigation. The
18 Court has recognized this potential data governance program was not relevant to the claims in this
19 litigation. (Dkt. 2557 at 35.) This initiative played no part in trial, was unrelated to the merits of
20 this case, and its disclosure would not improve the public's understanding of this case. Public
21 disclosure of this information would reveal internal technology and confidential business
22 procedures, to the detriment of Uber's competitive standing.

23 13. **CONFIDENTIAL PROCEEDINGS:** These documents or portions thereof
24 contain information regarding certain confidential proceedings between Uber and certain former
25 employees. The details regarding these proceedings have been maintained as confidential by
26 Uber. These confidential proceedings were unrelated to the merits of this case, and their
27 disclosure would not improve the public's understanding of this case. The Court has recognized
28 that information about these proceedings contain "irrelevant and prejudicial evidence" under

1 FRE 403. (*See* Dkt. 2557 at 35:22-24.) Uber requests that this information be kept sealed in
2 accordance with agreements between parties to these confidential proceedings, and in order to
3 protect the privacy of these former employees.

4 14. **BOARD OF DIRECTORS:** These documents or portions thereof contain highly
5 confidential business information from meetings of Uber's Board of Directors, including internal
6 notes, minutes, and testimony on internal discussions. Uber's request is narrowly tailored to
7 exclude information regarding Board meetings or activities that were the subject of public
8 testimony at trial. The Court granted sealing of such information as confidential business
9 information regarding internal corporate governance and the Board of Directors' methodologies
10 for conducting Board responsibilities in Dkt. 1168-6. (Dkt. 2393, Order at 6 (granting sealing of
11 Dkt. 1168-6).) Uber is a private company, and its Board of Directors keeps its internal
12 discussions highly confidential. Disclosure of these discussions from a confidential Board
13 meeting, particularly in light of extensive media coverage, would harm Uber's competitive
14 standing before investors and the public, with no benefit to the public's understanding of this
15 case.

16 15. **INTERNAL INVESTIGATIONS:** These documents or portions thereof contain
17 highly confidential information regarding internal communications among company employees
18 relating to internal investigations related to the "Jacobs letter." Similar to the information sealed
19 in accordance with the Court's November 29, 2017 and December 13, 2017 orders, this
20 information could implicate the safety, privacy, and reputational interests of former and current
21 Uber employees and other participants in those confidential proceedings. There is no
22 corresponding public benefit to the disclosure of this information, which was ultimately deemed
23 irrelevant for trial and unrelated to the merits of this case. Defendants request sealing of this
24 information to protect these interests.

25 16. **COMPETITIVE INTELLIGENCE:** These documents or portions thereof
26 contain highly confidential summaries, drafts, internal communications, and testimony
27 concerning Uber's efforts to gather competitive intelligence. Disclosure of this information
28 would reveal Defendants' self-driving industry business strategy, the identity of certain third

1 party competitors that Defendants have focused on, actual and potential research objectives,
2 research results, financial numbers regarding research budgets, and confidential business
3 negotiations. This information has been maintained as confidential and has not become public in
4 this litigation. The Court has recognized that this information was “too attenuated from Waymo’s
5 misappropriation claims.” (Dkt. 2557 at 33.) Disclosure of this information would allow
6 competitors to understand Uber’s business strategy in the self-driving industry, including what
7 information Uber possesses and considers, such that competitors could tailor their own business
8 strategy to the detriment of Uber’s competitive standing.

9 17. **INFORMATION RELATING TO FORMER CEO:** These documents or
10 portions thereof contain highly confidential information regarding Uber’s former CEO, including
11 written and oral communications between the former CEO and others relating to his departure
12 from Uber, the disclosure of which would threaten the privacy and reputational interests of
13 individuals currently or formerly at a company that is currently the subject of extensive media
14 coverage. This information has not become public. This Court has ruled that certain information
15 relating to the departure of the former CEO, particularly in the context of other lawsuits, would
16 not be permitted at trial, (Dkt. 1885), and public disclosure of this information would not assist
17 the public’s understanding of this case.

18 18. **ATTORNEY MEET AND CONFER COMMUNICATIONS:** These
19 documents or portions thereof contain notes of communications and negotiations between counsel
20 before the Special Master relating to various discovery disputes. These conversations were not
21 intended for public disclosure and contain information maintained as confidential by both parties,
22 including technical and business information. The notes describe lengthy private conversations
23 and negotiations that are naturally more candid and informal than a written email communication,
24 and were not transcribed by a court reporter. For all these reasons, Defendants request these
25 documents be filed entirely under seal.

26 19. Defendants’ requests to seal are narrowly tailored to the documents and portions
27 thereof that merit sealing.
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1 I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th
2 day of March, 2018 in Washington, D.C.

3
4 /s/ Michelle Yang

Michelle Yang

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10 **ATTESTATION OF E-FILED SIGNATURE**

11 I, Arturo J. Gonzalez, am the ECF User whose ID and password are being used to file this
12 Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Michelle Yang has
13 concurred in this filing.

14 Dated: March 9, 2018

/s/ Arturo J. González

ARTURO J. GONZÁLEZ